elements of a sale. *Gillam* v. *State,* 47 Ark. 555, 2 S. W. 185; *Hubby* v. *State,* 111 Ga. 842, 36 S. E. 301.

Statutes as clearly penal as that involved in the principal case are to be construed strictly. Merely because an act contravenes the policy of the statute it is not within the statute unless it comes conclusively within its wording. *Seigel* v. *People,* 106 Ill. 94; *Coker* v. *State,* 91 Ala. 94. 8 So. 875. The words exchange, barter and loan have a different legal import from the word sale. *Read* v. *Hutchinson,* 3 Camp. 352; *Harrison* v. *Luke,* 14 Mees & W. 139; *Williamson* v. *Berry,* 8 How. 540; *Mitchell* v. *Gile,* 12 N. H. 390. It would seem, therefore, that the word sale in such statutes cannot be construed to mean something different from its ordinary legal import. *Skinner* v. *State,* 97 Ga. 690, 25 S. E. 364.

MORTGAGES—NEGOTIABILITY WHEN SECURING NEGOTIABLE PAPER.—An action to set aside a conveyance of real estate on the ground of fraud was brought against the grantee and a mortgagee who had taken the encumbrance with notice of the fraud. The assignee of the mortgage and a negotiable note which it secured intervened. *Held,* the intervener, by taking the note and mortgage in good faith before maturity and for valuable consideration, took the mortgage as well as the note free from antecedent equities. *Robertson* v. *United States Live Stock Co.* (Iowa), 145 N. W. 535. See NOTES, p. 622.

NEGLIGENCE—OF BAILEE AS IMPUTABLE TO THE BAILOR.—The concurrent negligence of the bailee of a horse and the defendant resulted in the death of the horse. The bailor attempted to recover from the defendant. *Held,* the negligence of the bailee is not imputable to the bailor, and he may recover. *Spelman* v. *Delano* (Mo.), 163 S. W. 300.

There is a conflict of authority as to whether the contributory negligence of the bailee is imputable to the bailor in an action by the latter against a third party for negligent injury to the subject of the bailment. A third party, injured by the bailee's negligent use of the subject of the bailment cannot recover from the bailor. *Herlihy* v. *Smith,* 116 Mass. 265; *Bard* v. *Yohn,* 26 Pa. St. 482. Working from that basis, the court in the principal case drew the conclusion that the bailee's negligence should not be imputed to the bailor when the latter attempted to recover. It is certain that this decision is in accordance with the weight of modern authority. *New Jersey Electric Ry. Co.* v. *New York, etc., R. R. Co.,* 61 N. J. L. 287, 41 Atl. 1116, 43 L. R. A. 849; *Sea Ins. Co.* v. *Vicksburg, etc., Ry. Co.,* 86 C. C. A. 544, 159 Fed. 676, 17 L. R. A. (N. S.) 925; *Gibson* v. *Bessemer, etc., R. R. Co.,* 226 Pa. St. 198, 75 Atl. 194, 27 L. R. A. (N. S.) 689. *Contra, Texas, etc., Ry., Co.* v. *Tankersley,* 63 Tex. 57; *Illinois Central R. R. Co.* v. *Sims,* 77 Miss. 325, 27 So. 527, 49 L. R. A. 322. If the bailee, when negligent was engaged in a joint enterprise with the bailor, his negligence should be imputed. *Puterbalgh* v. *Reasor,* 9 Ohio St. 484. These cases involving the question considered in the principal case should be distinguished from the cases where the bailee is also the agent of the bailor as a carrier of goods, where the latter's negligence is very properly imputed to the bailor. This arises from the privity of con-